



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1993

Mr. Richard C. Ladd
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR93-585

Dear Mr. Ladd:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 22184.

The Health and Human Services Commission (the "commission"), Office of Youth Care Investigation, has received a request for Texas Department of Health (the "department") investigative reports. You claim that section 552.101 of the Government Code excepts the requested information from public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The department is required to investigate reports of abuse or neglect of elderly and disabled persons residing in facilities it regulates. Health & Safety Code §§ 242.125, 242.126. Section 242.127 of the Health and Safety Code provides:

A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the [Texas Board of Health] or the designated agency.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act now is codified in Chapter 552 of the Government Code. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Pursuant to its authority to adopt rules under section 242.127 of the Health and Safety Code, the department has enacted new regulations governing the disclosure of such reports. Tex. Dep't of Health, 18 Tex. Reg. 2625 (1993) (to be codified at title 25, chapter 145 of the Texas Administrative Code). Specifically, the department has promulgated the following rule concerning the disclosure of investigative reports:

(a) Confidentiality. All reports, records, and working papers used or developed by the [department] in an investigation are confidential, and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, *provided the report is deidentified*. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

Tex. Dep't of Health, 18 Tex. Reg. 2660 (1993) (to be codified at title 25, section 145.216 of the Texas Administrative Code). Because the department has promulgated rules pursuant to section 242.127 of the Health and Safety Code governing the release of confidential investigations,² the commission must release the information after complying with the requirements to deidentify the information as specified above.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LBC/rho

Ref.: ID# 22184

²In general, we must presume that a regulation interpreting a legislative provision, which an agency authorized to implement the provision has promulgated, is valid. See Attorney General Opinion DM-60 (1991) at 5 (citing 2 TEX. JUR. 3d *Administrative Law* §§ 18, 85, at 212, 300-01 (1979)).

cc: Ms. Denise Gamino
Staff Writer
Austin, American-Statesman
P.O. Box 670
Austin, Texas 78767-0670
(w/o enclosures)